(14) days after the receipt by the Purchaser or his Solicitors of the Notice to Complete of the Vendor's or of its Solicitors such notice to be accompanied by the Vendor's Architects' certificate that the building and road drainage and sewerage works have been completed in accordance with the relevant approved plans and that sewerage water and electricity and/or gas services have been duly connected to the building and that the said approval of the Competent Authority for subdivision has been obtained. On completion, the Vendor shall make and execute to the Purchaser an assurance of the property sold such assurance to be prepared by and at the expense of the Purchaser. The said Notice to Complete shall be given by the Vendor on or before the 30th day of June 1973 or such other subsequent date or dates as may after the date hereof be appointed by the Controller of Building. If the Vendor shall fail to give the said Notice to Complete on the appointed date the Vendor shall pay to the Purchaser liquidated damages calculated from day to day in respect of the period commencing from the appointed date up to the date when the said Notice to Complete shall have actually been given at the rate of nine per centum (9%) per annum on the purchase price such interest to be paid and deducted from the balance of the purchase price payable on completion."

The facts which are not in dispute are these. The appellants have, in compliance with Clause 3, paid 95% of the purchase price amounting to $171,000. There was considerable delay on the part of the respondents in completing the building of the house which was finally completed in November 1974. On November 28, 1974 the relevant authority issued a Temporary Occupation Licence granting permission for the house to be occupied. The respondents offered to hand over possession of the house to the appellants on December 1, 1974 but the appellants refused to take possession asserting that they were entitled to refuse possession until completion of the sale. Subsequently however, before completion, the appellants took possession of the house on April 17, 1975. The respondents failed to give Notice to Complete on the appointed date which fell on December 31, 1973 as stipulated under Clause 11 and eventually gave the requisite Notice to Complete which was served on the appellants on December 7, 1975.

Before the High Court hearing the respondents had admitted liability for damages calculated in accordance with Clause 11 up to the date when the Temporary Occupation Licence was issued and the damages so calculated have been paid to the appellants. The issue in the High Court was whether the appellants were entitled to damages as stipulated in Clause 11 from November 29, 1974 to the date when the Notice to Complete was served on them on December 7, 1975. Choor Singh J. held, on the undisputed facts, that the appellants were not so entitled. He held that the appellants' claim was in essence a claim for compensation for financial loss. He found that the appellants had no valid reason for refusing to take possession of the completed house when possession was offered to them by the respondents on December 1, 1974 following on the issue of the Temporary Occupation Licence on November 28, 1974. In respect of the period December 1, 1974 to April 16, 1975 Choor Singh J. took the view that the appellants could have been in occupation of the house and had no valid reason for not taking possession of it when offered. In respect of the period after the appellants took possession on April 17, 1975 Choor Singh J. found that as they were in possession they suffered no financial loss.

The appellants now appeal and contend that on the true construction of Clause 11 of the contract they were entitled to the liquidated damages as therein specified. They contend that the payment stipulated in Clause 11 was not in the nature of a penalty but was in truth liquidated damages. In our opinion the agreement between the parties is similar to a building contract. The contract contains a definite date from which liquidated damages for delay in giving a notice to complete are to run. The provision in question, having regard to all the terms of the contract, is clearly a genuine pre-estimate of the loss which is likely to flow from a breach of the contract and accordingly is recoverable without proof of the actual loss suffered. The fact that it is difficult to ascertain the loss caused to the purchaser by delay in giving a notice to complete indicates that the provision to pay a sum as specified in Clause 11 is in the nature of liquidated damages so long as the sum specified as payable is not excessive.

In the present case it is clear that the sum specified as payable is not excessive having regard to all the terms of the contract.

It is contended on behalf of the respondents that they were unable to give the Notice to Complete as provided by Clause 11 because they were then unable to make title to the land and premises for reasons beyond their control in that the competent authority had delayed in issuing a Certificate for Title for the land in question. We are unable to see how this difficulty can affect the bargain agreed upon by the parties.

In the result, the appeal succeeds and the appellants are entitled to judgment calculated in accordance with the provisions of Clause 11 for the period November 29 to December 7, 1975. The appellants are also entitled to costs here and in the High Court.

Appeal allowed.

Solicitors: *Yap & Yap; Guok & Co.*

WONG KEE CHIN v. PUBLIC PROSECUTOR

[C.C.A. (Wee Chong Jin C.J., Chua & Choor Singh JJ.) December 5, 1978]

[Singapore — Criminal Appeal Case No. 22 of 1977]

Misuse of Drugs — Controlled drugs — Trafficking in — Diamorphine — Comparison of Canadian legislative provisions on drugs with that of Singapore— Misuse of Drugs Act, 1973, ss. 2, 3, 6, 15 & 16(2) — Narcotics Control Act, 1960-61 (Canada), ss. 2(i), 3, 4, 5 & 8.

Criminal Law and Procedure — Misuse of drugs — Transporting 137.78 gms. of diamorphine — Presumption of trafficking in controlled drug arises — Shift of burden of proof to accused — Scope of s. 15(2) of Misuse of Drugs Act, 1973 — Misuse of Drugs Act, 1973, ss. 2, 3, 6, 15 & 16(2) — Narcotics Control Act, 1960-61 (Canada), ss. 2(i), 3, 4, 5 & 8.

The appellant was found carrying on his person two packages tucked under his socks, one on each leg. These were removed at the customs check point at Woodlands, Singapore. The two packages were found to contain 137.78 gms of diamorphine. The facts indicated that the appellant had travelled from Kuala Lumpur in a private taxi with the taxi driver and three other passengers including one Wong Hon Kok.

In his defence, the appellant admitted that the person who gave him the two packages told him that they contained heroin and that although he had not opened the packages and seen the contents he had no reason to disbelieve what he had been told about their contents. The appellant also said that he had been promised $1,000 for carrying the two packages from Kuala Lumpur to Singapore. The appellant told the trial court that the person who gave him the two packages was Wong Hon Kok, the said fellow passenger. The trial court found that even if what the appellant claimed was true, nevertheless he had transported the two packages from Kuala Lumpur to Singapore knowing that they contained heroin and that he was guilty of "trafficking" within the meaning of the Act. He was convicted and sentenced to death. He appealed.

Counsel for the appellant contended that the act of the appellant of carrying the heroin from Kuala Lumpur to Singapore did not constitute "trafficking" within the definition of "traffic" as laid down in the Act.

Held, dismissing the appeal: (1) when it is proved that the quantity of diamorphine which the accused person was transporting (in the dictionary sense of the term) was two or more grams, a rebuttable presumption arises under section 15(2) that the accused had the said controlled drug in his possession for the purpose of trafficking. Proof of the act of transporting plus the presumption under section 15(2) would constitute a *prima facie* case of trafficking which if unrebutted would warrant his conviction;

(2) in those circumstances the burden of proof would clearly shift to the accused and he would have to rebut the case made out against him. If he could convince the trial court by a preponderance of evidence or on the balance of probabilities that the drug was for his own consumption he would be entitled to an acquittal.

[**Editorial Note:** The court in this case considered the Canadian Narcotics Control Act, 1960-61, which was found to be different from the Singapore statute in many respects.]

Cases referred to:-

(1) *Regina* v. *Harrington and Scosky* (1964) I.C.C. Cases 189.

(2) *Regina* v. *Greene* 74 D.L.R. (3rd) 354, 357.

(3) *Regina* v. *Young* 2 C.C.C. (2nd) 560.

(4) *R.* v. *Larson* 6 C.C.C. (2nd) 145.

(5) *R.* v. *Wilson* (1954) 11 W.W.R. (N.S.) 282.

COURT OF CRIMINAL APPEAL.

S. Rai for the appellant.

Glenn J. Knight (Deputy Public Prosecutor) for the respondent.

Choor Singh J. (delivering the judgment of the Court): The appellant Wong Kee Chin was convicted by the High Court and sentenced to death on the following charge: —

"You, Wong Kee Chin, are hereby charged that you on or about the 25th of November 1976 at about 7.35 p.m. in motorcar No. BK 9850, at Woodlands Customs Station, Singapore, not being authorised by the Misuse of Drugs Act, 1973 (No. 5 of 1973) or any regulations made thereunder, did traffic in a controlled drug, specified in Class 'A' of Part I of the First Schedule to the aforesaid Act, to wit 137.78 grams of diamorphine, and you have thereby committed an offence under section 3(a) of the Misuse of Drugs Act (No. 5 of 1973), punishable under section 29 of the aforesaid Act."

He appealed against his conviction and at the conclusion of the hearing of the appeal we dismissed his appeal and intimated that we would give our reasons for our judgment later. We do so now.

The facts of this case were not seriously in dispute. It was common ground that on November 25, 1976 at about 12.30 p.m. at a taxi stand near the Merdeka Stadium in Kuala Lumpur, the accused boarded a private taxi Registration No. BK9850, for travelling to Singapore. Along the whole journey from K.L. to Singapore there were with him three other passengers namely Wong Hon Kok, Khaw Cheng Leng and his son John Khaw Kye Oo. There was of course also the taxi driver.

When the taxi arrived at Gemas it made its first stop for about half an hour to enable the passengers to have some refreshment. Soon after it resumed its journey and near Simpang Rengam it picked up a passenger who eventually got off the taxi at Kulai.

The taxi eventually went through the Johor Bahru checkpoint and finally arrived at the Woodlands checkpoint on the Singapore side of the causeway at about 7.30 p.m. There all the four passengers including the appellant were asked to alight and go to a search room of the Customs Department. In that room they were subjected to a routine body search by customs officer Tee Seng Kay in the presence of two police officers.

The appellant was found carrying on his person two packages tucked under his socks, one on each leg, in the manner shown in photograph Exhibit P2. These two packages were removed and opened by the said customs officer in the presence of the appellant and his fellow passengers and the two police officers. The first packet which was attached to the appellant's left leg was found to contain 11 small plastic packets filled with some brownish-grey substance in the form of granules and powder while the other packet found on the right leg contained 16 such plastic packets containing the same type of brownish-grey substance. These two packages with all the contents were later sent for analysis to the Department of Scientific Services.

The result of the analysis conducted by Lim Han Yong a scientific officer revealed that the total weight of the brownish substance in the two packages was 280.08 grams and that the diamorphine content was 137.78 grams by weight.

Diamorphine is a controlled drug under the Misuse of Drugs Act, 1973, and is listed in the First Schedule in Part I as a Class "A" drug. Under section 16(2) of the said Act, anyone found in possession of a controlled drug is presumed to know the nature of this drug until the contrary is proved.

When the appellant arrived at Woodlands checkpoint on the day in question he had clearly transported, from Kuala Lumpur to Singapore, the subject matter of the charge i.e. 137.78 grams of diamorphine. The trial court held that by the definition of "trafficking" in the Misuse of Drugs Act, 1973, the act of transporting by the appellant constituted "trafficking" under the said Act. Accordingly at the close of the Prosecution's case they called upon the appellant to enter upon his defence on the charge on which he was being tried.

In his defence the appellant admitted that the person who gave him the two packages told him that they contained heroin and that although he had not opened the packages and seen the contents he had no reason to disbelieve what he had been told about their contents. The appellant claimed that he had been promised $1,000 for carrying the two packages from Kuala Lumpur to Singapore. The appellant

further claimed that the person who gave him the two packages was Wong Hon Kok a fellow passenger in the taxi who was seated in the front seat beside the driver. The appellant told the trial court that he had not revealed Wong Hon Kok's name to the customs officer that day because Wong had asked him not to say anything to the authorities if he was caught with the two packages.

The trial court found that even if what the appellant claimed was true, nevertheless he had transported the two packages from Kuala Lumpur to Singapore knowing that they contained heroin and that he was guilty of trafficking within the meaning of the Act. He was accordingly convicted and sentenced to death.

Before us the only point taken by counsel was that on the evidence, the act of the appellant of carrying the heroin from Kuala Lumpur to Singapore did not constitute "trafficking" within the definition of "traffic" as laid down in the Act. Counsel relied on a number of Canadian decisions but before looking at them it is necessary to look at the relevant provisions of our Act and of the Narcotics Control Act of Canada.

In our Misuse of Drugs Act, 1973 the expression "traffic" is defined in section 2 as follows:—

"'traffic' means —

(a) to sell, give, administer, transport, send, deliver or distribute; or

(b) to offer to do anything mentioned in paragraph (a) above, otherwise than under the authority of this Act or the regulations made thereunder; and 'trafficking' has a corresponding meaning;"

Section 3 provides —

"3. Except as authorized by this Act or the regulations made thereunder, it shall be an offence for a person, on his own behalf or on behalf of any other person, whether or not such other person is in Singapore to —

(a) traffic in a controlled drug;

(b) offer to traffic in a controlled drug; or

(c) do or offer to do any act preparatory to or for the purpose of trafficking in a controlled drug."

Section 6 provides —

"6. Except as authorized by this Act or the regulations made thereunder, it shall be an offence for a person to —

(a) have in his possession a controlled drug; or

(b) smoke, administer to himself or otherwise consume a controlled drug."

Section 15 provides —

"15. Any person who is proved or presumed to have had in his possession more than —

(a) ....

(b) ....

(c) 2 grammes of diamorphine (heroin) contained in any controlled drug; or

(d) ....

shall, until the contrary is proved, be presumed to have had such controlled drug in his possession for the purpose of trafficking therein."

Section 16(2) provides —

"(2) Any person who is proved or presumed to have had a controlled drug in his possession shall, until the contrary is proved, be presumed to have known the nature of such drug."

In the Narcotics Control Act of Canada, "traffic" is defined in section 2(i) as follows —

"(i) 'traffic' means

(i) to manufacture, sell, give, administer, transport, send, deliver or distribute, or

(ii) to offer to do anything mentioned in sub-paragraph (i) otherwise than under the authority of this Act or the regulations."

Section 3 provides —

"3. (1) Except as authorized by this Act or the regulations, no person shall have a narcotic in his possession.

(2) Every person who violates subsection (1) is guilty of an indictable offence and is liable to imprisonment for seven years."

Section 4 provides —

"4. (1) No person shall traffic in a narcotic or any substance represented or held out by him to be a narcotic.

(2) No person shall have in his possession any narcotic for the purpose of trafficking.

(3) Every person who violates subsection (1) or (2) is guilty of an indictable offence and is liable to imprisonment for life."

Section 5 provides —

"5. (1) Except as authorized by this Act or the regulations, no person shall import into Canada or export from Canada any narcotic.

(2) Every person who violates subsection (1) is guilty of an indictable offence and is liable to imprisonment for life but not less than seven years."

It will be seen that the definition of "traffic" is substantially identical in both Acts but there are differences in the other relevant provisions. Possession of a drug for the purposes of trafficking is an offence under the Canadian Act but it is not so under our law. Again, under our Act possession of two or more grams of diamorphine raises the presumption that the accused is in possession of it for the purpose of trafficking therein. There is no such provision in the Canadian Act. Under, the Canadian Act a person who manufactures a controlled drug commits the offence of trafficking. Under our Act it is a distinct offence under section 4. We have section 16(2) under which a person who has a controlled drug in his possession is presumed to have known the nature of such drug until the contrary is proved. There is no such provision in the Canadian Act.

But the most important difference between the two Acts is this. The offence of trafficking and the offence of possession for the purpose of trafficking carry the same punishment under section 4 of the Canadian Act. Consequently prosecutions in Canada are invariably for the offence of possession for the purpose of trafficking and rarely for trafficking *per se*. Furthermore on a charge of possession for the purpose of trafficking under section 4(2) of the Canadian Act the issue of possession is first tried and if the court makes a finding that possession has been proved, then by virtue of the provisions of section 8 of the Act, the burden of proof shifts to the accused and he is given "an opportunity of establishing that he was not in possession of the narcotic for the purpose of trafficking and thereafter the prosecution is given an opportunity of adducing evidence to establish that the accused was in possession of the narcotic for the purpose of trafficking". The Canadian cases show that the main issue in all cases is not whether the accused was trafficking but whether his possession was for the purpose of trafficking.

The scheme of our Act is clearly different from that of the Canadian Act and this has to be borne in mind when considering the Canadian cases.

Counsel for the appellant cited the decision in *Regina* v. *Harrington and Scosky*,[1] and relied on the following passage from the judgment of Bird J.A. at page 195:—

"...In the definition of 'traffic', section 2 of the Act, the word 'transport' is associated with the words 'manufacture, sell, give, administer, send, deliver and distribute'. Six, if not all of these words, imply something more extensive than a use for the actor's own purposes. When one uses the word 'sell', 'give' 'administer', 'send', 'deliver' or 'distribute', he does not contemplate a transaction involving one person alone, but a transaction involving two or more persons.

These considerations impel me to the view that the word 'transport' in the definition of 'traffic' is not meant in the sense of mere conveying or carrying or moving from one place to another, but in the sense of doing so to promote the distribution of the narcotic to another. In my opinion, there must be something more extensive than mere conveying, or carrying or moving incidental to one's own use of the drug to warrant a conviction under section 4(1) for trafficking.

I am confirmed in this view by the following. It seems to me that, if I am wrong, every person who has a narcotic in his possession can be held guilty of trafficking; for it is inconceivable that he would not have conveyed or carried it from one place to another, if only from the hand of the supplier to his own person. The inclusion in section 4(1) of the words 'represented or held out by him to be a narcotic' indicates that Parliament had in mind the concept of a transaction with someone else. Having regard to the creation of the three separate and distinct offences contained in sections 3(1) and 4(1) and (2) Parliament could not, I think, have intended that proof of transporting in the mere dictionary sense of conveying or carrying from one place to another and without more should be sufficient to establish the crime of trafficking...."

Another passage to the same effect can be found in the judgment of Furlong C.J.N. in *Regina* v. *Greene*,[2] at page 357:—

"...In the clause which we are considering there are eight different ways in which an accused person can traffic in drugs; for greater clarity I give them — manufacture, sell, give, administer, transport, send, deliver or distribute, I am satisfied that each of these words must take the colour of the words read as a whole. If we read this lengthy list as a whole, one is forced to the inescapable conclusion that this is the exclusive list of the means whereby a person can traffic in a forbidden drug. Certain of these activities speak for themselves, in other words it is quite clear that to manufacture, to sell or to give a drug to a person is trafficking, and it may be equally apparent with respect to one or two others but the one with which we are concerned, that is the one to transport, I think has got to be given a broader meaning than counsel for the Crown would have. I think that the only logical and just meaning which can be assigned to this word is to read into it something more than the actual movement of the drug from point A to point B. For the purpose of argument one is perhaps, permitted a slight essay in exaggeration. The transportation of the drug from point A to point B in this case is stated to be from Marystown to St. John's, but it might equally be from two different houses in St. John's or in Marystown or anywhere en route. To carry the matter a little further, if a person carried a drug from a sixth-storey office in a large building to the ground floor he would be engaged in transporting; if he moved it from one room to another within his dwelling-house, he would be transporting the drug and if he took it from a cupboard in that room and put it in his pocket could not the same be said to be true. Transport as I read it in this case must be read to mean that the drug was being carried from one point to another with the intention of furthering the distribution or giving of it to another person...."

But in the same case, the dissenting Judge, Gushue J.J.A. had this to say, at page 366:—

"...Counsel for the defendant relied rather heavily on the cases of *R.* v. *Jimmo* (1973), 16 C.C.C. (2nd) 396, *R.* v. *Harrington and Scosky*, (1964) 1 C.C.C. 189, 41 C.R. 75, 43 W.W.R. 337, *sub nom*, *R* v. *MacDonald et. al.; R.* v. *Harrington and Scosky*, and in particular on the latter case where Bird J.A. said at page 195 C.C.C. page 342 W.W.R., that:

> These considerations impel me to the view that the word 'transport' in the definition of 'traffic' is not meant in the sense of mere conveying or carrying or moving from one place to another, *but in the sense of doing so to promote the distribution of the narcotic to another.*

(This emphasis is mine). With respect, I cannot agree with this statement if it means what it appears to mean and it is also interesting to note that later cases of the British Columbia Court of Appeal (as was the *Harrington and Scosky* case) certainly distinguish that statement and, at least impliedly, disapprove of it. I refer to the cases of *R.* v. *Young* and *R.* v. *Larsen*, *supra*. In referring to argument of counsel for the convicted appellant who relied upon Mr. Justice Bird's statement, Robertson J.A., said in the *Larsen* case (page 155 C.C.C., page 160 C.R.N.S.):

> The Narcotic Control Act says nothing about promoting and one should not fasten on that word in the judgment and interpret the definition of 'traffic' as though it did.

If it can be shown that an accused did or intended to do any of the things referred to in the definition of 'trafficking' laid down in the Narcotic Control Act, that alone is sufficient to justify a conviction...."

In *Regina* v. *Young*,[3] the appellant appealed from his conviction for possessing marijuana for the purpose of trafficking. Counsel for the appellant did not dispute that the appellant was in possession of the narcotic at the time of his arrest. Immediately prior to his arrest appellant Young had been living in Vancouver and his friend Greenberg, with the latter's wife, lived at Sechelt. Young and his wife planned to take up residence with the Greenbergs in their house at Sechelt. Greenberg, with money provided by himself and Young in equal portions, arranged to buy one kilo of marijuana in Vancouver for $225, and arranged with Young to transport the drug to Sechelt. Greenberg, called as a defence witness, said that it was for "our own personal use. My wife would naturally have consumed some of it with me". Greenberg said that the drug "was half mine". Presumably the other half was owned by the appellant. Actually the drug was in the form of a brick.

The appellant was intercepted and arrested in West Vancouver while he was on his way to Sechelt with the drug in his possession. He intended to deliver it to his friend Greenberg at Sechelt. He was at the time "transporting" the drug in the ordinary meaning of that word. The appellant contended that he was not "transporting" the drug within the meaning of that word as used in the Narcotics Control Act, 1960-61 (Can.) c.35 Young in his evidence admitted that he was carrying the "brick" of marijuana at the time of his arrest. He said that he intended to smoke the marijuana himself — he did not, to use his own words, "intend to distribute it". Counsel for the appellant relied on the decision in *R.* v. *Harrington & Scosky*, *supra*, and in particular on the passage already cited from the judgment of Bird J.A. The main judgment of the court was delivered by Maclean J.A. who in dealing with *Harrington's* case stated that the essence of that decision was in his view to be found in the following words: "there must be something more extensive than mere conveying or carrying or moving incidental to one's own use of the drug to warrant a conviction under section 4(1) for trafficking" and went on to say at page 563:—

"...In the case at bar the appellant can take no comfort from the Harrington case because his own evidence shows that what he was doing was something more extensive than merely

conveying or carrying or moving (a drug) incidental to his own use of the drug. This appellant was transporting the drug for the purpose of delivering it to Greenberg and himself. Further, the learned Judge below has apparently drawn the inference that it was in the immediate contemplation of both the appellant and Greenberg that both of them and their wives and guests would participate in the use of the drug. It seems clear that the appellant at the time of his arrest when in possession of the drug was engaged in the 'transport' of the drug. (See definition of 'traffic', Narcotic Control Act, section 2(i)).

It should also be noted that the definition of 'traffic' also includes to 'deliver'. Again, this by his own evidence, is the very thing that the accused was engaged in doing at the time of his arrest. The complete delivery to his friend Greenberg was only frustrated by the intervention of the police...."

In *R.* v. *Larsen*,[4] counsel for the appellant, relying on the *Harrington's* case submitted that the trial judge should have directed the jury that the simple giving or delivering of a drug would not amount to trafficking unless that giving or delivering was qualified by and was for the purpose of promoting the distribution of a narcotic from one person to another. Branca J.A. in rejecting this submission stated, at page 150:—

"...In the *Harrington* case Bird J.A. simply laid down in the first place that the quantity did not give rise to an inference of trafficking and then that the transporting involved in that case was for the mere conveying or moving or carrying of a narcotic incidental to the possessor's own use and was not a transportation amounting to trafficking and that, in order to amount to a transportation which amounted to trafficking the drug carried, conveyed or moved to one place or another had to be for the purpose of promoting its distribution from one person to another.

In the instant case the appellant did not have the ounce of hashish for his own use. He was quite plainly on his own evidence giving or delivering the hashish which he had purchased for the police officer to him. The giving or delivering was an act which in itself promoted the distribution of the hashish from the vendor to the purchaser...."

And Robertson J.A. rejected the doctrine of promotion, in the following words, at page 155:—

"...The Narcotics Control Act says nothing about promoting and one should not fasten on that word in the judgment and interpret the definition of 'traffic' as though it did. Mr. Berger, if I understand him correctly, would construe 'promote' in the sense in which it appears in the noun 'promoter', namely, one who conceives and initiates some financial undertaking, I do not think that this is what Bird, J.A. intended.

When I read the passage in the light of the Narcotic Control Act, some other cases on the Act and the context in which it appears, I think that Bird, J.A., used 'promote' in the sense of 'further' or 'advance' (see the Shorter Oxford English Dictionary): when one has a drug in his possession for his own use and takes it with him as he goes from one place to another place, he does not further or advance its distribution to another person...."

Finally, there is the decision of the British Columbia Court of Appeal in *R.* v. *Wilson*[5] where the court laid down the principle that an inference of trafficking may be drawn from evidence of possession of a relatively large quantity of drugs. The principle laid down is that the quantity might well negative the inference that the possessor had that quantity for his own use and give rise to an inference that the possessor had it as aforesaid for sale and or distribution. Sloan C.J.B.C. speaking for the court said, at page 283:—

"In the past, in both trial courts and in this court, inferences have been drawn, and properly so, from the amount of drugs found in the possession of the accused person. Generally speaking if an addict has in his possession a small quantity of drugs sufficient for his own use for a limited period of time then the courts have concluded that these drugs were for his own use and not for sale or distribution. Where, however, an addict was found in possession of a relatively large quantity of drugs then the courts have drawn the inference that he did not have them solely for his own use but for sale or distribution...."

In our judgment, all these Canadian cases though illuminating, are not of much help to a person who has been caught in Singapore transporting two or more grams of diamorphine and is charged with trafficking in a controlled drug under section 3(a) of our Act. This is so because of the provisions of section 15(2) of the Act. When it is proved that the quantity of diamorphine which the accused person was transporting (in the dictionary sense of the term) was two or more grams, a rebuttable presumption arises under section 15(2) that the accused had the said controlled drug in his possession for the purpose of trafficking. Proof of the act of transporting plus the presumption under section 15(2) would constitute a *prima facie* case of trafficking which if unrebutted would warrant his conviction. In those circumstances the burden of proof would clearly shift to the accused and he would have to rebut the case made out against him. The rebuttal will depend upon the evidence placed before the court. If he can convince the trial court by a preponderance of evidence or on the balance of probabilities that the drug was for his own consumption he would be entitled to an acquittal. Factors such as the type of "transporting", the quantity involved, whether or not the accused is an addict, would be relevant. It would be a question of evidence and the inferences to be drawn from the totality of the evidence before the court.

In the present case, the appellant had transported (in the dictionary sense of the term) 137.78 grams of diamorphine from Kuala Lumpur to Singapore. He admitted that he was doing it for his friend Wong Hon Kok for a consideration of $1,000 and that had he succeeded in going through the Customs checkpoint at Woodlands, he would have delivered the diamorphine to Wong Hon Kok. The delivery to Wong Hon Kok was frustrated by his arrest. On these facts the appellant had clearly failed to rebut the case made out against him by the Prosecution and the trial judges were right in their decision to convict him for trafficking under section 3(a) of the Act.

Finally, in our judgment a person who "transports" in the dictionary sense of the expression, a large quantity of diamorphine from one country to another, as in this case, is *prima facie*, because of the section 15(c) presumption, trafficking in the said drug within the meaning of the Act.

It was for these reasons that we dismissed the appeal of the appellant and confirmed his conviction and sentence.

Solicitors: *Goh & Hin.*

Appeal dismissed.